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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/254,900 03/12/99 BEN-HAIM

S 20066-13

EXAMINER

QM22/0425

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IASTRZAR, I

ART UNIT

PAPER NUMBER

3762

DATE MAILED:

04/25/01

16

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/254,900

Applicant(s)

BEN-HAIM ET AL.

Examiner

Jeffrey R. Jastrzab

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☒ Responsive to communication(s) filed on 2/26/01.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 17-20, 23-30, 32, 35, 36, 38, 39, 45-47, 49, 50-53 is/are rejected.
- 7) ☒ Claim(s) 12-16, 21, 22, 31, 33, 34, 37, 40-43 and 48 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☒ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Arguments***

Applicant's arguments filed 2/26/01 have been fully considered but they are not persuasive. The addition of the magnitude and timing language would not overcome Scherlag since the atria are clearly unable to propagate an action potential since they are refractory after the P-wave in the Scherlag device and method. As to the Mower reference, Applicant's arguments are deemed persuasive.

***Claim Rejections - 35 USC § 102***

Claims 1-11, 17, 23-29, 32, 35, 36, 38, 44, 49, 51-53 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Scherlag US-5083564 for the reasons of record.

Claims 1-4, 9-11, 17-20, 27-30, 35, 38, 39, 45-47, 49, 50 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Freeman US-5205284. See column 2 at lines 28-38 in particular.

***Allowable Subject Matter***

Claims 12-16, 21, 22, 31, 33, 34, 37, 40-43 and 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims,

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 11/14/00 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (703) 308-2097. The examiner can normally be reached on Monday through Friday from 6:30am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angie Sykes, can be reached on (703) 308-5181. The fax phone number for this Art Unit is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.



Jeffrey R. Jastrzab  
Primary Examiner  
Group 3762

April 23, 2001